IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 736 of 2006.

Decided on: 15.05 2007.

State of H.P. & Another.
… … … Petitioner.

Versus

Bhagat Ram.
… … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the Petitioners:	**Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.**
For the Respondent:	**Mr. Tarlok Chauhan, Advocate.**

Rajiv Sharma, Judge (Oral):

This petition has been filed against the order dated 20.5.2006 passed by the Presiding Judge, H.P. Labour Court, Shimla in M.A. No.94 of 2004.

The brief facts necessary for adjudication of this petition are that the respondent-workman (hereinafter referred to as the workman for convenience) had served a demand notice to the Executive Engineer, Mechanical Division, H.P., PWD, Dhalli, on 25.8.1998. After the reconciliation failed, the Himachal Pradesh Government made a

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Whether reporters of local papers may be allowed to see the judgment? No.

reference to the Labour Court, Shimla vide notification dated 10th July, 2000 to the following effect:-

> ***"Whether the demand raised by the Pradhan, Him Shakti P.W.D. Karamchari Sangh vide demand notice dated 25.8.98 for regularization of Shri Bhagat Ram, ex-worker as Complaint Attendant w.e.f. 1.1.97 from the Executive Engineer, Mechanical Division, H.P.P.W.D. Dhalli, Shimla-171 012 by serving in different capacities on daily wages for 10years and further his demand for quashing the order of the employer, dated 10.3.98 is legal and justified. If yes, to what relief of service benefits and amount of compensation, Shri Bhagat Ram is entitled ?"***

After the reference was made vide Annexure P-5 on 10th July, 2000, the workman filed claim petition before the Labour Court. The main claim of the workman before the Labour Court as per averments contained in the claim petition was that he should have been regularized as Clerk instead of beldar since he was discharging the duties of Clerk/Complaint Attendant since his initial engagement. The Executive Engineer filed reply to the claim petition on 11th April, 2001. The petitioners were proceeded ex-parte by the learned Labour Court on 20.8.2001. The Labour Court had partly answered the reference in favour of the workman and consequently, he was held entitled for regularization in service of the Department as Clerk/Complaint Attendant instead of work charged beldar alongwith continuity in service and seniority. The workman was denied the arrears on account of difference of wages. The award was answered by the Labour Court on 9.1.2004.

The petitioners filed application under Order 9 Rule 13 read with Section 151 Code of Civil Procedure, 1908 for setting aside ex-parte award. The application is placed on record and marked as Annexure

P-8. As per the averments contained in this application, the representative, i.e. Shri S.K. Gupta, Assistant Engineer, Sub-Division, H.P., PWD, Bhata Kuffar was the incharge of the case and in his absence the then Senior Assistant, Shri Chaman Singh was attending the case before the Labour Court. It is also mentioned in the application that both the incumbents, i.e. Shri S.K. Gupta, Assistant Engineer and Shri Chaman Singh, Senior Assistant have retired from service on 30.9.2001 and 30.6.2001 respectively and they had not informed the department about the out come of the proceedings which led to the department being proceeded ex-parte on 20.8.2001. It is further stated in the application that the department came to know about the ex-parte award on 27.3.2004 when the same was published in Rajpatra dated 20.3.2004. The application filed under Order 9 Rule 13 CPC was supported by application under Section 5 of the Limitation Act for condonation of delay in filing the application for setting aside the ex-parte order dated 20.8.2001.

The Labour Court had framed the following issues on the basis of the pleadings of the parties:-

1. Whether there is sufficient ground for condonation of delay? ---- OPA.

2. Relief.

The Labour Court has dismissed the application filed by the petitioners-State on 20.5.2005.

Mr. M.S. Chandel, learned Advocate General has strenuously argued that the department was not aware of the next date of hearing in the case, i.e. 20.8.2001 since the officers who were deputed to look after the case did not inform the department. Mr. Khan further submits that the order passed by Labour Court dated 20.5.2006 is not

sustainable in the eyes of law. Mr. Tarlok Chauhan appearing on behalf of the workman has supported the order dated 20.5.2006.

I have heard the parties and perused the record.

The ex-parte order was passed by the Labour Court on 20.8.2001 and the reference was answered by the Labour Court on 9.1.2004 and thereafter the same was published in the Rajpatra dated 20th March, 2004. Shri Devesh Sharma, Executive Engineer (Mechanical) has appeared before the Labour Court and he has admitted that Shri S.K. Gupta had informed the office on 30.5.2001 that the case was fixed for 20.8.2001. He has also admitted that the case has not been pursued effectively by the official who was specially disputed for the purpose. The stand taken by the petitioners before the Labour Court was also false since the official had duly informed the office vide letter dated 30.5.2001 that the next date of hearing in the case was 20.8.2001. Despite the department being aware of the next date of hearing on the basis of letter dated 30.5.2001, none had chosen to appear before the Labour Court which led to the passing of ex-parte order against them on 20.8.2001. Shri S.K. Gupta has retired on 30.6.2001, but before his retirement, he had informed the office on 30.5.2001 that the next date in the case was fixed for 20.8.2001.

There is neither any jurisdictional error nor any procedural irregularity in the order dated 20.5.2006. The Labour Court has taken into consideration the entire material placed before it including the documentary as well as the statement of Shri Devesh Sharma. The department was aware of the next date which was 20.8.2001 on the basis of letter dated 30.5.2001 addressed by Shri S.K. Gupta. This Court is of the opinion that the petitioners were negligent in defending the case before the Labour Court. The petitioners were proceeded ex-

parte on 20.8.2001 and the award has been announced on 9.1.2004. The Labour Court has thus come to a just conclusion that the application preferred by the petitioners-State was devoid of any merit.

Consequently, this petition is dismissed and the order dated 20.5.2006 passed by the Labour Court is up-held. The respondent-workman is entitled to costs quantified at Rs.3,000/-.

(Rajiv Sharma)
Judge

May 15, 2007
(sck).